

MONTANA PUBLIC DEFENDER COMMISSION

Conference Call

Public Location: Montana Board of Crime Control Board Room
5 S. Last Chance Gulch, Helena MT 59601

September 29, 2011

Draft Minutes

Commissioners Present

Margaret Novak, Chester; Richard (Fritz) Gillespie, Helena; Kenneth Olson, Great Falls; Chris Daem, Billings; Al Avignone, Bozeman; Ann Sherwood, Pablo

Commissioners Absent

Charles Petaja, Helena; Majel Russell, Billings; Terry Jessee, Billings; Caroline Fleming, Miles City; Bill Snell, Billings

Staff Members Present

Randi Hood, Chief Public Defender; Joslyn Hunt, Chief Appellate Defender; Harry Freebourn, Administrative Director; Mori Woods, Investigator Supervisor; Cathy Doyle, Administrative Assistant; Regional Deputy Public Defenders Jon Moog (Helena), Dave Stenerson (Missoula), Sherry Staedler (Butte), and John Putikka (Kalispell); Appellate Staff members Eileen Larkin, Sarah Braden, and Angela Stagg; Ed Sheehy, Assistant Public Defender, Major Crimes

In addition, Peggy MacEwen and Rende Mackay (Department of Administration, State Human Resource Division) were in attendance to present information and answer questions regarding the recruitment and selection process.

Interested Persons

Robin Haux and Timm Twardoski, American Federation of State, County and Municipal Employees (AFSCME); Nikki Zupanic, American Civil Liberties Union – Montana (ACLU); Gregg Dewitt, Legislative Fiscal Division

1. Call to Order

Chairman Fritz Gillespie called the meeting of the Montana Public Defender Commission to order at 10:40 a.m. He revised the agenda to address the recruitment plan first, including discussion, public comment, further discussion and action, then moving on to choosing an interim chief public defender using the same process.

2. Recruitment Plan for Selecting Permanent Chief Public Defender

Peggy MacEwen and Rende Mackay from the State Human Resource Division assisted in developing the draft recruitment plan and vacancy announcement, which are on the OPD website. Ms. Mackay said that they are anticipating an eight week process once the announcement has closed. The announcement will be listed on the Montana State Bar Association web site, the National Association of Criminal Defense Lawyers (NACDL) web site, and the American Civil Liberties Union network, in addition to the State of Montana job web site. Applicants will submit a resume and cover letter through the state's electronic system and Commission members will be able to log in to screen the applications. Commissioner Sherwood suggested that listings with the National Legal Aid and Defender Association and the Montana Association of Criminal Defense Lawyers (the local affiliate of NACDL) be added.

The initial screening will be done by the Department of Administration (DOA) to determine that applicants meet the minimum qualifications. Applications will then be forwarded to a committee of at least two Commission members and DOA staff to do telephone screening. Several applicants will be advanced to a larger committee including three or four commission members. Ms. Mackay recommends a writing sample at this step. The two or three most qualified candidates will be advanced as finalists to the full Commission for an informal meet and

greet, followed by a formal interview with the full Commission. Reference checks will be conducted by DOA for all finalists.

Commissioner Avignone asked about the request for a writing sample; it seems more appropriate as a tool for screening an associate, not the Chief Public Defender. Chairman Gillespie replied that this was his idea, and that it is extremely important for the Chief to be able to communicate effectively in writing, especially in terms of legislative requests. Commissioner Novak agreed that it is important to be clear and articulate and is in favor of a writing sample.

Ms. Mackay highlighted the primary qualifications and duties contained in the vacancy announcement. Policy and planning abilities and a strong supervisory and managerial background are required, as well as the ability to communicate effectively with many entities, including the public, members of the criminal justice system, and legislators. Admission to the Montana State Bar is a requirement.

The Commission engaged in a lengthy discussion of the merits and limitations of limiting the applicant pool to those who are already admitted to the Montana bar. Since there is no reciprocity in Montana, and the statute requires that the Chief be admitted to the bar, anyone not already licensed would have to take the bar exam. The deadline to apply to sit for the February bar is October 1, so applicants would not be able to take it until July, and the results would not be known for another six weeks at least. Should they fail the bar, the Commission would have to decide whether to undertake another search, and the agency would be seriously disrupted. There is a potential for disaster in this scenario that is not an issue for those already licensed in Montana. In addition, the legislative agenda for the next session needs to be in place by the end of June 2012, so the new Chief will need to be able to hit the ground running, and not awaiting the bar exam. On the other hand, limiting applicants to those already admitted could result in eliminating outstanding candidates. Using a nationwide search as a starting point will reach many attorneys admitted to practice in Montana who live elsewhere. Chairman Gillespie passed along former Chairman Jim Taylor's advice to choose someone wisely, and not in haste to make a replacement.

Chairman Gillespie invited public comment on the recruitment plan. Nikki Zupanic, Public Policy Director for the ACLU, said that there are several advantages of a nationwide search including cross-pollination from someone with experience in another system. Issues of caseloads, management and supervisory issues that a chief public defender should be well versed in are universal country wide. Allowing best practices from other jurisdictions to rise to the top, and just being exposed to what is out there during the selection process could be helpful. The ACLU recommends a truly nationwide search and will work with DOA to share their distribution lists. They would encourage the Commission to take up any issues regarding licensure at the end, not by limiting choices at the beginning.

The discussion resumed and Chairman Gillespie said that he had some stylistic points to take care of in the vacancy announcement if there was no objection. There was none.

The Commission debated whether six years' experience was sufficient to meet other criteria identified in the vacancy announcement including strong management skills. Commissioner Avignone suggested changing the requirement to a minimum of 10 years. The Commission voted 5-1 to keep the minimum at six years, noting that the selection team will be free to review the number of years of law experience as well as number of years of management experience for each applicant.

The Commission agreed by acclamation to accept applications from those not yet admitted to the Montana bar.

Next, the proposed salary range was deliberated. Chief Hood's base pay is currently \$93,600 per year. This compares to a range of \$105-112,000 for the attorney general and the Missoula and Yellowstone County attorneys, and \$85-105,000 for the four surrounding states (Idaho, Wyoming, North Dakota and South Dakota). Statute requires that the Commission consider the compensation paid to comparable prosecutorial positions

when determining the salary of the Chief Public Defender. Chairman Gillespie noted that Chief Hood refused a pay raise at least once, and that the line attorneys make \$7-10,000 less than their counterparts on the prosecution side. He said that it would be a disservice to the line staff if the new Chief is paid more than Chief Hood's current salary until the legislature provides sufficient funding to pay both FTE and contract attorneys up to par with the prosecution. He suggested establishing a salary range of \$82,500-93,600 for the permanent position. Commissioner Olson asked if the Commission is limited by the budget to pay only Chief Hood's current salary? Chairman Gillespie said the salary is not a line item appropriated by legislature, and the Commission is free to pay as much as they want, but the money would have to come from somewhere else, removing resources needed by line attorneys. There were no additional comments from the Commission members or the public. The roll call vote to announce the salary range as \$82, 500-93,600 was unanimous.

The Commission voted unanimously to leave the application period open until November 30. The application period could be extended further if needed.

The Commission members made some final suggestions to refine the language in the vacancy announcement, including emphasizing the obligation to work with the legislature, which DOA will incorporate.

The Commission voted unanimously to proceed with the vacancy announcement and the selection plan.

3. Appointment of Interim Chief Public Defender

Chairman Gillespie said that he didn't think there would be significant changes entertained by an interim chief while the hiring process, now scheduled to go through end of February, is underway. He expects that the interim chief will serve approximately five months.

Chief Hood recommended that Dave Stenerson, Regional Deputy Public Defender in Region 2 (Missoula) serve as the interim chief. Chairman Gillespie has received support for that appointment from all of the other regional deputies. He noted that there is some reservation from the Governor's Office because Mr. Stenerson does intend to apply to be the permanent chief, and that would seem to give him an inside track. However, the Governor's Office also made it clear that this is a decision for the Commission to make and they will not intervene. He has also heard that there is internal concern for various reasons, primarily that it gives the wrong appearance, so this is an important decision to make.

No other internal candidates have expressed an interest in the interim position. Commission members noted that anyone in the interim position would be on the inside track for the permanent position, and they shouldn't be ineligible to apply. If whoever steps in is doing a good job, having a leg up is just the way it goes. They noted that there is good support for Mr. Stenerson among his colleagues, as well as among those Commissioners who know him personally.

The Commission unanimously agreed to extend the offer of Interim Chief Public Defender to Mr. Stenerson, offering a salary of \$90,000. Chairman Gillespie will negotiate additional specifics including dates and commuting from Hamilton to Butte.

4. Public Comment

Chairman Gillespie offered a final opportunity for public comment, and there was none.

5. Adjourn

Commissioner Novak moved to adjourn, Commissioner Olson seconded and the motion carried. The meeting adjourned at 12:00 p.m.